

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**KISSIE THOMAS,
Complainant,**

DOCKET NO. 07493 TIN6-1203

vs.

**NORTH WEST HENDRICKS SCHOOLS CORP.
AND
PITTSBORO SCHOOL,
Respondent.**

ORDER

Comes now R. Davy Eaglefield, III, Hearing Officer and enters his Recommended Findings of Fact, Conclusions of Law and Order, which Recommendation is in the words and figures as follows:

(H. I.)

And come now Respondents, Northwest Hendricks Schools Corporation, (hereinafter "School Corp.") and Pittsboro School, by counsel, and file Respondent's Exceptions (sic) to Recommended Findings of Fact, Conclusions of Law, and Order, which are in words and figures as follows:

(H. I.)

And comes now Complainant, Kissie Thomas, by counsel, and files her Reply to Respondent's Exceptions (sic) To Recommended Findings of Fact, Conclusions of Law, and Order, which Reply is in words and figures as follows:

(H. I.)

And comes now the Indiana Civil Rights Commission (hereinafter "ICRC" or the Commission") and holds a Hearing on Objections, hearing arguments of counsel for the parties relative to the objections set out by Respondents.

And comes now ICRC having considered the above and being duly advised in the premises, and finds and rules as follows:

1. It is not the function of the Commission when hearing objections to a hearing Officer's recommendation to re-weigh the evidence and substitute its judgment for that of the Hearing Officer on matters where there is conflicting evidence. While the Commission may have sat at the Hearing and observed the demeanor of the witnesses, made some or all of the findings Respondents seek, it would be inappropriate, not having so sat and observed, to substitute its judgment for that of the Hearing Officer, where, as here, there is substantial evidence to support the decision recommended by the Hearing Officer.

2. The Hearing Officer's Recommended Conclusions of Law that School Corporation is a "person", that ICRC has jurisdiction over the subject matter and the parties, and that School Corporation committed a "discriminatory practice" are correct, and relevant, statements of law.

3. There is no reason to fail to adopt the Order recommended by the Hearing Officer.

IT IS, THEREFORE, ORDERED

1. Respondent's objections should be, and the same hereby are, overruled.

2. The Recommended Findings of Fact, Conclusions of Law, and Order entered by the Hearing Officer should be and the same hereby are, adopted as an order of the commission and are incorporated by reference herein.

Dated: February 22, 1980

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RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The undersigned Hearing Officer was appointed to hear the above captioned case and the parties were notified of said appointment by service by mail on their attorneys.

Complainant Kissie Thomas (hereinafter "Thomas") was present at said hearing and was represented by counsel, Mr. Robert D. Lange and Ms. Patricia E. Pickney. Respondents Northwest Hendricks Schools Corp. (hereinafter "School Corp") and Pittsboro School ("Pittsboro School") were represented by counsel, Mr. Jeff H. Abbott. Also present on behalf of Respondents was Ms. Anna Martin, Treasurer.

Having considered the official record, including the Pre-Hearing Conference Memorandum submitted by the parties, the evidence admitted at the hearing, the arguments of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Thomas is a female citizen of the State of Indiana.
2. School Corporation is, and was at all times material, a subdivision of the State of Indiana and a public school corporation organized and existing under the laws of the State of Indiana.
3. Pittsboro School is, and was at all times material, a part of School Corporation and is not a distinct legal entity.
4. School Corporation has, at all material times, employed six (6) or more persons for wages or salary.
5. On January 6, 1976 as filed the instant complaint with the Indiana Civil Rights Commission ("ICRC"), contending, among other things not now relevant, that she was paid less than male janitors who performed similar work and that that, in connection with other conditions of employment, in effect, forced her to quit.
6. Thomas was hired by School Corporation as a janitor at Pittsboro School and began her employment in that capacity on August 11, 1975.
7. Thomas salary in that position was one hundred dollars (\$100.00) per week during the period of her employment with School Corporation.
8. Dan Zielinski (hereinafter "Zielinski") was the Superintendent of Schools when Thomas was hired and throughout her employment with School Corporation.
9. Mr. Rodney Wayne Ely (hereinafter "Ely") was the Principal of Pittsboro School and therefore, Thomas immediate supervisor during the academic year 1975-1976.
10. The Pittsboro School, prior to the hiring of Thomas, had served as a location where certain students in grades one (1) through twelve (12) attended.

11. The Tri-West School opened at the beginning of academic year 1975-1976, and was a consolidated high school of all high schools in School Corporations area, including those students who would formerly have gone to Pittsboro School at the high school level.
12. Thomas duties varied from time to time but always including cleaning—floors, windows, furniture, and the like. The variations involved the number of rooms and buildings in which she performed these functions.
13. Thomas shift was the night shift and generally involved a five (5) day week of eight (8) hour days.
14. Originally, Thomas was told by Zielinski that her job would be to clean the elementary building and that someone else would clean the junior high building.
15. Mr. Carl Dale (hereinafter “Dale”) was also employed at the Pittsboro School.
16. Dale worked the day shift in a custodial position.
17. The essence of Dale’s job was to perform routine maintenance (or upkeep) on equipment. He did, however, perform cleaning duties if the need arose on his shift.
18. Dales and Tomas’s jobs were significantly different.
19. At other schools within School Corporation there were janitors on the night shift.
20. At each of those schools, there was a custodian who worked the day shift and performed a job substantially similar to Dale’s.
21. The night janitors at Tri-West performed similar functions there to those Thomas performed at Pittsboro School.
22. The male night janitors at Tri-West were paid six hundred dollars (\$600.00) per month.
23. While there were some differences in the duties of the Tri-West night janitors and Thomas, these differences were not substantial.

24. There is no evidence that any female night janitor employed by School Corporation during the fall semester of 1975 was paid at any rate other than one hundred dollars (\$100.00) per week.
25. The male janitors at the North Salem building apparently were paid at the same rate as Thomas; however, since the North Salem building was no larger than the Pittsboro building and since there were always two (2) janitors, none of those males had jobs comparable to the job of Thomas.
26. There were also some part-time employees, all of which were students, who were apparently paid the minimum wage, at that that time one dollar and sixty cents (\$1.60) per hour. Given these employees status as students and the absence of any evidence to the contrary, it must be presumed that the responsibilities of these employees were minimal.
27. The only other male paid at the same rate as Thomas was her replacement, Mr. Harold Long. The significance of this evidence must be discounted for either of the following reasons:
 - a. Mr. Long, his wife, and children all performed the work although only Mr. Long was compensated. Whatever the merits of this arrangement to the Long family, it is certainly unique enough that Mr. Long's duties cannot be considered as comparable to Thomas duties.
 - b. Mr. Long was not employed until after School Corporation had received and respondent to the instant complaint.
28. Thomas employment with School Corporation was terminated January 5, 1976.
29. Thomas job was similar in terms of skill, effort, and responsibility to her husband's job as a night janitor at Tri-West.

30. There is no evidence of any reason, other than sex, for the disparity in pay between Thomas and her husband.
31. Had Thomas been paid at the same rate as similarly situated males, she would have earned a total of two thousand eight hundred and fifty dollars (\$2,850.00), between august 11, 1975 and January 5, 1976 inclusive.
32. Thomas earned, during that same period, a total of two thousand one hundred and twenty dollars (\$2,120.00).
33. Thomas lost a total of seven hundred thirty dollars (\$730.00) as a result of being paid less for her work than similarly situated males.
34. Any conclusions of Law that should have been deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The complaint was timely filed under IC 22-9-1-3(o).
2. School Corporation is a "person" as that term is defined in IC 22-9-1-3(a).
3. School Corporation is an "employer" as that term is defined n IC 22-9-1-3(h).
4. ICRC has jurisdiction over the subject matter and the parties.
5. It is a "discriminatory practice" as that term is used in IC 22-9-1-3(1) to pay a female employee, because of sex, less than a male employee when those employees perform jobs which are substantially equivalent in terms of skill, effort, and responsibility.
6. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. School Corporation shall cease and desist from paying female janitors or custodial employees less than similarly situated male janitors or custodial employees because of sex.

2. School Corporation shall pay to Thomas the sum of seven hundred thirty dollars (\$730.00) minus appropriate deductions required bylaw and/or agreement.

Dated: December 5, 1971